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No. 81-523

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

CONTAINER CORPORATION OF AMERICA,

Appellant,

v.

FRANCHISE TAX BOARD,

Appellee.

On Appeal from the Court of Appeal
of the State of California for the
First Appellate District

MOTION OF APPELLEE TO DISMISS OR AFFIRM

GEORGE DEUKMEJIAN,
Attorney General
NEAL J. GOBAR,
Deputy Attorney General

110 West A Street
Suite 700
San Diego, California 92101
Telephone: (714) 237-7308

Attorneys for Appellee
Franchise Tax Board

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The appellee (hereinafter sometimes FTB) moves the Court to dismiss the appeal herein or in the alternative to affirm the judgment below under Rule 16.1 on the grounds that the appeal does not present a substantial federal question; the questions on which the decision of the cause depends are so unsubstantial as to not need further arguments; the judgment rests on an adequate non-federal

basis (factual determinations made under California rules of evidence) and the specific question sought to be reviewed in the jurisdictional statement was not properly raised in the state courts from which an appeal is taken.

QUESTION PRESENTED BY APPELLANT

"Whether requiring the income of foreign subsidiaries of a domestic corporation doing business in California to be included in the parent corporation's tax base for determining the income to be apportioned to California for purposes of the California franchise tax is repugnant to the foreign commerce and due process clauses of the federal constitution, and in conflict with well established federal tax policy, when:

"1. The foreign subsidiaries are organized and operating exclusively in foreign countries and are not part of a functionally integrated business with the parent and no significant property is transferred between the parent and the foreign subsidiaries; and

"2. The inclusion of the foreign subsidiary income in the parent's unitary tax base results

in a significant distortion of the parent's taxable income and double taxation of the foreign subsidiary income through misattribution of that income to California."

(See Jurisdictional Statement p. (i).)

The decision appealed from appears in Appendix A to the Jurisdictional Statement and is reported at Container Corp. of America v. Franchise Tax Bd. (1981) 117 Cal.App.3d 988, 173 Cal.Rptr. 121. CCA refers to California Revenue and Taxation Code section 25101 (as it provided 1963-65), Title 18, California Administrative Code section 25120(b) (in Appendix G) and the "Foreign Commerce Clause" (U.S. Const. art. I, § 8, cl. 3) and the "Due Process Clause of the Fourteenth Amendment" as the constitutional, statutory and regulatory provisions which this case involves. (Jurisdictional Statement pp. 2-3.)

STATEMENT OF THE CASE

The Jurisdictional Statement (pp. 3-7) contains substantial misstatements of the proceedings before the California courts and the evidence of unity presented in this case.

CCA correctly states that California apportions income according to the familiar and long used "property, payroll and sales" formula in determining net income of corporations taxable by California where such corporations engage in a unitary business in foreign countries through use of subsidiaries as well as when the unitary business is conducted solely within the United States or the portion of the unitary business conducted outside the United States is conducted by the corporation itself.

CCA states that it here challenges the constitutionality of

including the taxpayer's foreign subsidiaries in the unitary business group where (CCA asserts) "the foreign subsidiary is not functionally integrated with the parent and misattribution of income to the parent results and where the California method contradicts federal tax policy." (Jurisdictional Statement p. 4; see also "Question Presented" quoted above.) CCA totally ignores the determinations made by both the trial court and the Court of Appeal that CCA and its foreign subsidiaries constituted a unitary enterprise. In fact, most of the appellate court decision dealt with this issue (see Appendix A-1 to A-18 to Jurisdictional Statement). The California Court of Appeal extensively discussed some of the facts of CCA'S international operations which caused that court to conclude that they were part of its unitary

business. The "STATEMENT" in the Jurisdictional Statement ignores these facts. It recites "facts" inaccurately.

Among the facts which show the unitary nature of CCA'S international operations, which CCA would have this Court consider insubstantial or ignore entirely are the following:

1. CCA and its subsidiaries were all engaged in the same (paperboard/packaging) business (CT 194, 197, 199, 221). CCA began operations in each foreign country (except Holland) by creating its own company. (CT 194.) Its foreign activities would not even exist but for extensive activity by CCA, especially during the earlier years of business in those countries. (CT 221-224.) These operations, having been created by the expertise and financial strength of CCA began as an integral part of its

unitary business. Do not become non-unitary once they have received all these benefits merely because they no longer need day-to-day direction of business details and the former CCA employees who manage and operate the business are placed on the local payroll. CCA's contributions continue to benefit the foreign subsidiaries. (Such contributions by CCA are not reflected in the separate accounting method which CCA asks this Court to require.)

2. CCA handles its foreign subsidiaries like its domestic (concededly unitary) operations (decentralized; CT 193, 198, 209-210). CCA maintains control and participates in decisions it considers important. (CT 196, 220.) The CCA personnel (present and former) working at the foreign subsidiaries were in <u>key management</u> positions and controlled the

operational decisions of the foreign subsidiaries (Exhibits C & D). CCA'S vice-president of Latin American operations was also on the payroll of a South American subsidiary and had responsibility for all Latin American operations including 25 plants in 3 countries (CT 247), and it appears that a similar vice-president had similar authority over the European operations;

3. When dealing with bulky products such as containers and the materials they are made from, an efficient business would not transport raw materials or products large distances at large costs. (CT 254.) Instead it would allocate the world-wide market to its various branch operations, as CCA did. Some linerboard and unknown quantities of paper were provided to the foreign subsidiary by and through CCA

notwithstanding the high cost of transportation. (CT 254-255.) CCA made its used equipment available to its foreign subsidiaries. (CT 257.) (This was a simbiotic arrangement because the foreign subsidiaries had substantial use for lower-volume, less-automated equipment and provided a ready market when CCA wished to move into more advanced automated machinery.) (CT 209.) CCA purchased new equipment for its subsidiaries. (CT 158.)

In many cases charges by CCA were less than those which the subsidiaries would have had to pay to third parties. (E.g., CT 157, 158.) CCA'S separate accounting does not reflect the true benefits to the subsidiaries of this assistance by CCA;

4. The financial strength and expertise of CCA were at all times

available to and used by its subsidiaries when needed. The extent or benefit to the subsidiaries of the technical expertise and training is not shown in the evidence; nor is there evidence that CCA'S separate accounting made any attempt to (let alone did) reflect accurately the value of such services. Similarly, over half of the subsidiaries' financing came directly from or was guaranteed by CCA. (CT 250-251.) CCA did not establish what, if anything, subsidiaries paid it for this substantial and valuable financial assistance.

5. CCA has the burden of proof. It failed to prove that its contributions to its foreign subsidiaries (including financial, management skills, technical expertise, equipment and materials) were insubstantial. It failed to prove that its separate accounting

accurately reflects its contributions to its subsidiaries. (CCA inaccurately calls its "separate accounting " method an "arms length method" in its Jurisdictional Statement.)

CCA'S assumption in its statement of the issue presented that it is "not functionally integrated" is not established by the evidence and is contrary to the uniform determinations of the state courts that CCA'S foreign subsidiaries are a part of its unitary business. Similarly, CCA'S assumption in its statement of the issue that "misattribution of income to the parent results" and "the California method contradicts federal tax policy" have not been established by the evidence presented in this case and are simply incorrect.

CCA'S primary arguments before the state courts were that the evidence established that it was not engaged in a unitary business with its foreign subsidiaries. By far the largest part of the briefs, oral argument and courts' opinions dealt with this subject. CCA also tried to show that formula apportionment misallocated income by comparing income apportioned to California under unitary formula to income apportioned to California using its internal separate accounting methods in determining income from its foreign activities. Relying on this court's decision in Japan Line, Ltd. v. County of Los Angeles (1979) 441 U.S. 434, CCA also argued that that case required that it be permitted to report California taxes based on its income as determined by its separate accounting methods. (At no time did CCA argue for

modification of the formula used; it argued solely for total rejection of the unitary formula approach and that it be permitted to report by separate accounting only.)

We believe the scope of the constitutional issues raised by CCA is shown by the Court of Appeal opinion appealed from. (Appendix A to the Petition.)

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED: NO FURTHER ARGUMENT IS REQUIRED

A. Container Corporation's Foreign Subsidiaries are Part of Its Unitary Business

Only when a business is unitary does California apportion income by formula. (See Superior Oil Company v. Franchise Tax Board (1961) 60 Cal.2d 406.) This Court recognizes that the unitary principle is the "linchpin" of apportionability. (Mobil Oil Co. v. Vermont (1980) 445 U.S. 425, 439.) CCA concedes that it is a unitary business, but asks this Court to re-examine the factual determination by the California courts that its foreign operations (conducted through subsidiaries) are part of its unitary business. (Jurisdictional Statement pp. 21-23.) This court should not do so.

The California courts applied the test of unity established in Butler Bros. v. McColgan (1941) 17 Cal.2d 664; affd. 315 U.S. 501, and Edison California Stores v. McColgan (1947) 60 Cal.2d 406, 412), which have been uniformly applied in California for forty years (the three unities test and dependence -- contribution test). This Court has approved and followed those tests both in the Butler Bros. case itself (315 U.S. 501) and in more recent cases. In Mobil Oil Co. v. Vermont (1980) 445 U.S. 425, this Court cited Butler Bros. with approval (p. 438) and further stated that in order to avoid apportionability the taxpayer must show income is from an "unrelated activity" or a "discrete business" (p. 439), and that no apportionment would be made where the out-of-state activities

have nothing to do with the business activities within the state. (Mobil Oil Co. v. Vermont, supra, 445 U.S. at p. 442.)

No case has been cited by CCA nor found by the undersigned in which this Court undertook to review the evidence and reversed a state court finding that an enterprise was unitary. This Court should not reexamine the evidence or reweigh the factual determinations of the lower courts that CCA's foreign subsidiaries are part of its unitary business. (See Grayson v. Harris (1924) 267 U.S. 352, 358.)

Both California and this Court place the burden upon the taxpayer to prove that any activities which it asserts should be excluded from its unitary business are a distinct independent and discrete business. A cursory review of CCA'S activities shows that they are

1. All foreign subsidiaries are wholly or mostly owned by CCA. They are therefore subject to any and all controls and directions CCA should choose to impose.

2. CCA and subsidiaries engage in the same business (paperboard and packaging). CCA divided the market among the various units which do not compete with each other. The foreign units are treated the same as the United States units (which are conceded a part of the unitary business) in delegating responsibility to local management. Much of the "local" management of the foreign subsidiaries was performed by about 30 Americans transferred from CCA and/or on CCA'S payroll. The foreign operations were the responsibility of two officers which were on both CCA and subsidiary payrolls. Major decisions (defined by

CCA as capital transactions) for the subsidiaries had to be approved by CCA.

3. The initial foreign operations, (e.g., those in Colombia) were spawned and conducted by CCA personnel until CCA developed local expertise. The activities of several separate subsidiaries sidiaries within a single country were integrated by CCA to work closely together as a unit within the country of their operation. CCA'S technical expertise, training programs and technical materials were available to and made use of by the foreign subsidiaries. In a joint venture, CCA and a Colombian subsidiary developed a pulping process which would allow CCA'S Latin American subsidiaries to use locally available hardwoods. CCA procured or directly provided much of the technical equipment used by subsidiaries, especially in Latin American.

4. CCA'S financial strength supported the subsidiaries funding needs. Over 50% of the foreign subsidiary borrowing was directly from or guaranteed by CCA.

5. CCA provided to the subsidiaries raw materials which it purchased itself or procured from other persons. The amounts of paper so provided are unknown. CCA has not established that such amounts were not a substantial benefit to the subsidiaries.

6. CCA referred customers to its subsidiaries, (including a user of banana boxes which comprise a substantial portion of Latin American subsidiary products.)

7. While CCA calls its separate accounting method "arms length" CCA has not provided evidence establishing that its separate accounting methods

account for the substantial benefits provided by CCA to its foreign subsidiaries. The evidence does show that CCA transferred its used machinery at depreciated "book value" and procured items for subsidiaries at charges lower than independent brokers would have charged. Also some expertise was paid for simply by allocation of overhead costs. There is no suggestion that any payment was made in consideration of CCA guaranteeing loans; and presumably CCA would not have loaned money to the subsidiaries had outside money been available at the same price. The evidence does not show that many of the management and technical services and assistance provided were even paid for, let alone at an arms length price.

B. Formula Apportionment is Proper for International as Well as Interstate Unitary Enterprises

In arguing that the extension of unitary apportionment misattributes foreign source income (Jurisdictional Statement pp. 15-21) CCA states that the "extension of the three-factor formula beyond the borders of the United States produces an unreasonable result." (Jurisdictional Statement p. 17.)[1/] CCA tries to distinguish this Court's Bass and Mobil Oil cases. It cannot. Those cases control.

The Bass, Etc., Ltd. v. Tax Com. (1924) 266 U.S. 271, case clearly held that an international company was subject to formula apportionment where engaged in a unitary enterprise.

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1. This also appears to be the main thrust of a proposed of Amicus Curiae brief (which also misstates the facts and law, and should not be filed).

CCA asserts Bass is inapplicable because Bass did business through divisions rather than subsidiaries. In 1980 this Court reaffirmed the Bass case in Mobil Oil Co. v. Vermont, supra, 445 U.S. 525, which involved an American company doing business outside the United States through subsidiaries, just as CCA does. In Mobil this Court observed that the unitary principle is the "linchpin" of apportionability (at page 439) and stated that the Court must look through the nature of income taxed by the state (there dividends) to the underlying activity to determine the propriety of apportionability. (At page 440.) Thus this Court in Mobil looked at the unitary relations among Mobil and its foreign subsidiaries to determine that formula apportionment was proper.

FTB submits that this Court has clearly determined in Mobil that a formula may be used to apportion income of American corporations engaged in a unitary enterprise through foreign subsidiaries, such as CCA.

C. Where a Business is Unitary, Analyses Based on Separate Accounting Principles do not Preclude Formula Apportionment.

CCA suggests that as applied to the facts here formula apportionment is inaccurate and unfair and that "distortion is apparent from the record in this case" (Jurisdictional Statement pp. 16,17). What CCA does thereafter, however, is to rephrase the same old arguments rejected many times before that the formula is distorted because it gives different results from separate accounting. It refers to wage rates and a concept of 'return on investment" used

by some American companies in determining where to expand operations. These arguments totally ignore the basic concept of the unitary approach that separate accounting is not designed to, and does not accurately apportion income of a unitary enterprise among the various jurisdictions where business is done.[2/]

CCA has not contended that another formula or variations in the standard three-factor formula were needed to avoid its claim of distortion. It simply argues that apportionment must be totally abandoned and separate accounting must be used. This Court has clearly

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2. CCA lumps all foreign activities together in its arguments. Its figures which it presents to the Court (Jurisdictional Statement p. 11) show that in three of the seven foreign countries where CCA has operating subsidiaries formula apportionment shows greater income than CCA'S separate accounting, while in four it shows less. (See Jurisdictional Statement p. 11.)

ruled that separate accounting may not be demanded by a taxpayer and a state may require formula apportionment where, as here, the taxpayer engages in a unitary business. (Mobil Oil Co. v. Vermont (1980) 445 U.S. 425; Exxon Corp. v. Department of Revenue of Wisconsin (1980) 447 U.S. 207.)

D. The Japan Line Case Does Not Require Use of Separate Accounting

CCA argues that the Japan Line case requires a separate accounting here (Jurisdictional Statement pp. 8-15). In Japan Line, Ltd. v. County of Los Angeles (1979) 441 U.S. 434 this Court discussed (among other things) enhanced risk of multiple taxation and impairment of a federal policy of tax uniformity. That case held impermissible a property tax in the United States on "instrumentalities of foreign commerce" (shipping

containers) which belonged to a Japanese company, were taxed on their full value in Japan, and were in the United States only as necessary for use in shipping goods in foreign commerce. This Court determined that because of a federal policy that foreign owned instrumentalities moving in foreign commerce be subjected to a property tax on their full value in their domiciliary country and the imposition of another property tax by a jurisdiction through which the instrumentality was travelling would in fact impose a double property tax, the second tax could not be imposed. These Japan Line principles were fully discussed and rejected as applied to use of an apportionment formula to determine taxable income of a United States corporation, such as CCA, engaged in a unitary business throughout the United States and in

foreign countries in the subsequent Mobil case.

This Court has recognized that the total income of a unitary business is a single unit which must be apportioned in some manner for the purposes of taxing income by states where a portion of the business occurs. Only a rough approximation is possible and required. (International Harvester Co. v. Evatt (1947) 329 U.S. 416, 422.) In Mobil, when discussing tax measured by income of a unitary business, this Court observed that profitability arises from the operation of the unitary business as a whole, then stated that it is "misleading to characterize the income of the business as having a single identified 'source.' Although separate geographical accounting may be useful for internal auditing, for the purposes of state taxation it is not

constitutionally required." (Mobil, supra, 445 U.S. 438.) In Japan Line (441 U.S. 455) this Court stated that it was not there dealing with imprecision in apportionment but a situation "where true apportionment does not exist. . . ." It is thus clear that the income taxation of unitary business requires apportionment while the property taxation under consideration in Japan Line precluded apportionment. The reasoning and analysis is Japan Line is therefore totally inapplicable here.

1. No federal "one voice" policy precludes formula apportionment of income:

This Court in the Mobil case directly rejected the contention that there is federal policy requiring that only separate accounting be used to determine how much of the income of an international unitary business is

apportionable to a state (445 U.S. 448-449).[3/]

2. There is no unconstitutional double taxation:

The impossibility of exactly allocating income of a multi-jurisdictional unitary business has been recognized a number of times by this Court, most recently reiterated in Mobil and Exxon cases. The proper constitutional test for adequacy of an apportionment formula is whether it

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3. Much of the support which CCA cites was contained in arguments and materials prepared by proponents of a United Kingdom treaty provision which was rejected by Congress. Little if any of this was introduced into evidence in this case and accordingly is not a proper part of the record and is inadmissible hearsay insofar as the truth of the statements made outside the courtroom are concerned. Even the rejected United Kingdom treaty provision would have permitted the formula apportionment here in issue. IRS appears to use formula apportionment methods in applying the federal income tax law to foreign operations. (See 89 Harvard L.R. 1202 at 1211-1212, 1222-1223.)

taxes income "out of all appropriate proportion to the business transacted" in the taxing jurisdiction. (425 U.S. 437.) CCA has offered no evidence suggesting that the seven to eight percent of its unitary income apportioned to California by the three-factor formula is out of all appropriate proportion to CCA'S business here. On the contrary, CCA'S own separate accounting methods apportion six to seven percent of such income to California. This miniscule difference strongly refutes any claimed constitutional invalidity.

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There is no absolute uniformity among income tax laws.[4/] Thus, there is always the potential for under-taxation or over-taxation of a multi-jurisdictional business, even were every jurisdiction to

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4. Income tax statutes of different states and countries indicate that even where based on separate accounting principles the method of measuring the net taxable income would have some differences in each jurisdiction. There seem to be numerous differences in what are considered business income and expenses, and deductions allowed for depreciation and depletion. Statutory differences would seem to be multiplied when individual administration and determinations as to "reasonable" amounts (particularly allowable as business deductions) enter into the calculations of taxable net income.

Even the Uniform Division of Income for Tax Purposes Act (UDITPA) used by California (which has been adopted by a number of states and appears to be one of the most uniform methods of apportionment) has some variations among the jurisdictions. It is believed that there is no reasonable possibility of insuring that 100 per cent and only 100 per cent of the income of a unitary business operating in several taxing jurisdictions is included in tax measures.

apportion income based on separate accounting principles. It should be further noted that multiple taxation of the same income at various governmental levels is clearly permitted. (E.g., the United States and California each tax all the income of corporations doing business there.) We know of no case holding that the United States could not tax income of an American corporation because a foreign country could tax or had already taxed the same income. The power of this Court over and the constitutional considerations applicable to the taxation of income of American corporations like CCA who are engaging in unitary businesses throughout the world are entirely different from those before the Court in Japan Line.

Even were Japan Line applicable, this Court specifically limited its ruling there to a situation where

actual double taxation was clearly established by the evidence. It stated " . . . we have no occasion here to decide under what circumstances the mere risk of multiple taxation would invalidate a state tax, or whether this risk would be evaluated differently in foreign, as opposed to interstate commerce." (441 U.S. 452, fn. 17.) CCA has not established by admissible evidence that its payment of any income taxes in any foreign countries (at either state or federal level) has resulted in double taxation of the same income.5/

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5. CCA introduced no evidence that any other state level jurisdiction has imposed income tax on its foreign subsidiaries.

Further, CCA's own figures show that no more than 33 percent of its unitary income came from foreign sales, and thus could have been subjected to the

(continued)

It should be clear from the foregoing that neither the Japan Line case, nor the (nonexistent) "federal

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Footnote 5 cont:

income tax it paid to foreign countries. California taxed only seven to eight percent of CCA'S unitary income (the percentages differed slightly in different years) by CCA'S own figures (Jurisdictional Statement p. 11). Thus about 60 percent of CCA's world wide income apparently has escaped both California and any foreign income tax. (It should be noted that the function of California's three-factor formula is to allocate a percentage of world-wide income to California. It has no function of determining how the remaining (here 92-93%) unitary income should be apportioned among the rest of the world. It is not proper, as CCA does to say that California apportions any percentage of income to any other jurisdiction.)

Also, American corporations doing business abroad receive a credit against federal income tax for certain income taxes paid in foreign countries. All such credits should be considered in determining if and to what extent there was double taxation of the same income. (Where the United States has given income tax credit for the foreign tax the tax burden appears no different than if only the United States and the state imposed an income tax.)

uniformity" nor the (unproven) "double taxation" forms a substantial basis for this Court's reviewing or reversing the lower court decision here.

CONCLUSION

CCA almost totally ignores the unitary concept so clearly enunciated by this Court most recently in the Mobil and Exxon cases. Income of a multi-jurisdictional unitary business is properly apportioned through a formulary method. This rule is equally applicable to a United States corporation which operates outside the United States and through subsidiaries. The normal, most commonly accepted and used formula is the three-factor formula used by California here, embodied in UDITPA, and used by a large number of other states.

CCA has failed to establish by admissible evidence that any (let alone

all) of its foreign subsidiaries are not a part of its unitary paperboard and packaging enterprise. A cursory review of the evidence, we feel, makes unity clear.

CCA'S attempt to show distortion consists primarily of comparision between formula apportionment and the separate accounting approach which ignores the substantial contributions by CCA to the profitability of the foreign subsidiary operations. Contrary to CCA'S assertions, these substantial contributions are not accounted for by CCA'S separate accounting. The miniscule (one to two percent) difference (between formula and separate accounting) in the amount of world-wide income apportioned to California and lack of contrary evidence clearly show that CCA has totally failed to prove that the income apportioned to California under the UDITPA

formula is "out of all appropriate proportion to the business transacted" in California. CCA has not suggested any modifications in or alternative formulas to the UDITPA formula used by California here. CCA insists only that separate accounting must be used.

This Court's discussion of the Japan Line case in its subsequent Mobil case shows that CCA'S reliance on Japan Line is misplaced. As this Court observed in Mobil, notwithstanding substantial consideration by Congress, this country has not adopted a policy precluding international formula apportionment. CCA relies heavily upon various statements of people who have lobbied against formulary apportionment but introduced no substantial admissible evidence supporting its criticism of the unitary principle. Even the United

Kingdom treaty provision in support of which much of the matter relied upon by CCA was offered (but which was rejected by Congress) would not in any way have impeded applying the formula apportionment approach to American corporations doing unitary business abroad through foreign subsidiaries, such as CCA.

The problem of double taxation of the same income at the same governmental level (and its converse problem of escape of income from any taxation) is difficult if not insoluble. This Court has recognized that in dealing with unitary businesses exact allocation is impossible and rough approximation is necessary. CCA has not established any state level taxation by any foreign jurisdiction. Nor has CCA shown that California's income tax, plus all foreign taxes resulted in more than 100 percent

of its income being taxed, or any unconstitutional burden on it.

In sum, the recent determinations of this Court in the Mobil and Exxon cases clearly support the decision of the courts below; CCA has not established by admissible evidence any factual basis supporting its implied assertion that its international business is not unitary or that it has been deprived of any constitutional rights under due process or the commerce clause.

This Court should either dismiss this action for want of a substantial federal question, or affirm the lower court's decision on the basis of this motion and without hearing on the grounds that the questions have been heretofore resolved by this Court and are so unsubstantial as to not need further argument. Constitutional issues beyond

those discussed above and heretofore resolved against CCA by this Court were not properly raised. The judgment rests on adequate non-federal basis because of CCA'S failure to prove that it was not a unitary business or facts showing deprivation of constitutional rights under the due process or the commerce clause.

Respectfully submited,

GEORGE DEUKMEJIAN,
Attorney General

NEAL J. GOBAR,
Deputy Attorney General

Attorneys for Appellee
Franchise Tax Board

NJG:szl/bah

SUPREME COURT OF THE UNITED STATES

No. 81-523, October Term, 1981

CONTAINER CORPORATION OF AMERICA,

Appellant,

v.

FRANCHISE TAX BOARD,

Appellee.

CERTIFICATE OF SERVICE

I, Neal J. Gobar, one of the attorneys for the Franchise Tax Board, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of October, 1981, I served copies of the foregoing Motion of Appellee to Dismiss or Affirm on several parties thereto, as follows:

On the Container Corporation of America, appellant, by mailing three copies in a duly addressed envelope, with first-class postage prepaid, to its attorneys of record, as follows:

Franklin C. Latcham
Counsel of Record
Prentiss Willson, Jr.
One Market Plaza
Spear Street Tower, 34th Floor
San Francisco, California 94105

It is further certified that all parties required to be served have been served in accordance with Supreme Court Rule 28.

NEAL J. GOBAR
Deputy Attorney General

Attorneys for Appellee
Franchise Tax Board